

THIS AGREEMENT dated for reference the _____ day of _____, 2023.

BETWEEN:

REGIONAL DISTRICT OF EAST KOOTENAY, a Regional District pursuant to the *Local Government Act*, RSBC 2015, Chapter 1 and incorporated pursuant to the laws of the Province of British Columbia with a place of business at 19 - 24th Avenue South, Cranbrook BC V1C 3H8.

(the "RDEK")

OF THE FIRST PART

AND:

Yaqit ʔa·knuq̓i'it as represented by the Chief and Council, and having its office at Box 76, Grasmere BC V0B 1R0

("Yaqit ʔa·knuq̓i'it")

OF THE SECOND PART

WHEREAS

- A. The RDEK is empowered to undertake any work or service for a First Nation Government within the boundaries of the RDEK;
- B. Yaqit ʔa·knuq̓i'it is desirous of having the RDEK provide building and plumbing inspection services;
- C. The Reserve is within the geographical boundaries of the RDEK as outlined in Schedule A attached to and forming part of this Agreement;
- D. By Band Council Resolution, Yaqit ʔa·knuq̓i'it has approved and consented to the terms and conditions hereinafter set out at _____ day of _____ 20____, a copy of which is to be submitted to the RDEK..

NOW THEREFORE in consideration of the premises and the terms, conditions, consideration, warranties, and representations contained herein, the parties hereto covenant and agree as follows:

1. DEFINITIONS

In this Agreement the following expressions will have the meanings herein assigned to them.

- 1.1 **Agreement** means this Agreement.
- 1.2 **Band Council** means the Council of Yaqit ʔa·knuq̓i'it within the meaning of the *Indian Act*, or any successor to Yaqit ʔa·knuq̓i'it Council pursuant to legislation enacted by the Parliament of Canada from time to time.
- 1.3 **Indian Act** means the *Indian Act*, R.S.C. 1985, c.I-5 and any regulation made thereunder, all as amended or replaced from time to time, and any reference to a section of that Act will include that section as amended or replaced from time to time.
- 1.4 **Reserve** means the Yaqit ʔa·knuq̓i'it Reserve, I.R. #2, and in the event that the name of the Reserve is changed from time to time pursuant to the *Indian Act* as defined herein, then "Reserve" will mean the Reserve so named.

2. SERVICES PROVIDED

- 2.1 The RDEK agrees to provide building and plumbing inspection services on the Reserve by a qualified building inspector, pursuant to the terms of the relevant bylaws of Yaqit ?a·knuqfi 'it, when requested to do so, subject to RDEK capacity.

3. PAYMENT FOR SERVICES

- 3.1 Before December 31st of each year, the RDEK will provide Yaqit ?a·knuqfi 'it with an invoice for the preceding calendar year, for all expenses incurred by the RDEK on behalf of Yaqit ?a·knuqfi 'it in providing building and plumbing inspection services, such expenses to include actual wages of the building inspector plus 55% overhead charge for administration costs.
- 3.2 Yaqit ?a·knuqfi 'it will pay the invoice issued pursuant to Section 3.1 of this Agreement, within 30 days of receipt.
- 3.3 If Yaqit ?a·knuqfi 'it defaults in any payment required to be made to the RDEK under this Agreement for a period in excess of 30 days from the date that Yaqit ?a·knuqfi 'it receives the invoice, the amount owing will bear interest at a rate of 10% per annum, all calculated monthly on the balance from time to time owing.

4. INSURANCE AND INDEMNITY

- 4.1 Yaqit ?a·knuqfi 'it covenants to obtain and keep in force during the term of this Agreement, at its sole expense, insurance satisfactory to the RDEK protecting the RDEK and Yaqit ?a·knuqfi 'it (without any rights of cross-claim or subrogation against the RDEK) against claims for personal injury, death, property damage or third party or public liability claims arising out of, in connection with, or in any way related to the inspection services provided by the building inspector for Yaqit ?a·knuqfi 'it pursuant to this Agreement and in an amount not less than \$5,000,000 and with the RDEK named as additional insured.
- 4.2 Yaqit ?a·knuqfi 'it hereby indemnifies, saves harmless, releases and forever discharges the RDEK and its officers, employees, agents and elected officials from and against any and all manner of actions, causes of action, debts, suits, losses, liabilities, costs, demands and expenses whatsoever, whether known or unknown, of any person in any way arising from, in connection or attributable to the negligence or other fault of Yaqit ?a·knuqfi 'it, its servants, agents and employees in connection with or in consequence of the Agreement. This indemnification provision will survive the cancellation, termination or expiry of the Agreement.
- 4.3 The RDEK hereby indemnifies, saves harmless, releases and forever discharges Yaqit ?a·knuqfi 'it and its officers, employees, agents and elected officials from and against any and all manner of actions, causes of action, debts, suits, losses, liabilities, costs, demands and expenses whatsoever, whether known or unknown, of any person in any way arising from, in connection or attributable to the negligence or other fault of the RDEK, its servants, agents and employees in connection with or in consequence of this Agreement. This indemnification provision will survive the cancellation, termination or expiry of this Agreement.
- 4.4 Yaqit ?a·knuqfi 'it will submit a Certificate or Certificates of Insurance required under this Agreement and such certificates will be submitted upon signing this Agreement and upon renewal of the insurance policy(ies).

5. TERMINATION

- 5.1 Should Yaqit ?a·knuqfi 'it fail to perform any covenant or condition required under this Agreement, the RDEK may, at its option, terminate this Agreement and all services provided. The termination of this Agreement by the RDEK will not preclude the RDEK from bringing action against Yaqit ?a·knuqfi 'it for money owed by Yaqit ?a·knuqfi 'it during the terms of this Agreement and up to the date of such termination.
- 5.2 Should the RDEK fail to perform any covenant or condition required under this Agreement, Yaqit ?a·knuqfi 'it may, at its option, terminate this Agreement and all services provided. The termination of this Agreement by Yaqit ?a·knuqfi 'it will not preclude Yaqit ?a·knuqfi 'it from bringing action against the RDEK for money owed for services not being delivered by RDEK during the terms of this Agreement and up to the date of such termination.

6. COMMENCEMENT AND TERM OF AGREEMENT

- 6.1 This Agreement will commence on January 1, 2023 and will continue until December 31, 2026 or until it is terminated by either party giving the other party 90 days written notice of its intention to so terminate.
- 6.2 Notice of Termination may be served by either party, in writing, and will be delivered by pre-paid private courier or hand-delivered to the address indicated on the face page of this Agreement, or other electronic communication to the usual numbers or addresses of the respective party.

7. AGREEMENT AMENDMENT

- 7.1 This Agreement may be amended from time to time upon terms and conditions mutually acceptable to the parties.

8. SEVERANCE

- 8.1 If any portion of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, the illegal or invalid portion must be severed and the decision that it is illegal or invalid does not affect the validity of the remainder of this Agreement.

9. EXECUTION OF AGREEMENT

- 9.1 The parties acknowledge and agree that this Agreement may be executed by electronic signature, which will be considered as an original signature for all purposes and will have the same force and effect as an original signature. Without limitation, "electronic signature" will include faxed versions of an original signature or electronically scanned and transmitted versions of an original signature.
- 9.2 This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

10. INTERPRETATION

- 10.1 Nothing contained or implied herein will prejudice or affect the rights and powers of the parties in the exercise of their functions under any public or private statutes, bylaws, orders or regulations, all of which may be fully and effectively exercised in relation to each other and their assets as if this Agreement had not been executed and delivered by all of the parties to this Agreement.
- 10.2 This Agreement will not be construed so as to create any greater standard of care of liability on the part of the RDEK in respect of the supplying of building and plumbing inspection services hereunder to occupants within the Reserve, or to land or facilities within the Reserve, than that which applies to the supply of such services to other occupants, lands or facilities within the RDEK.
- 10.3 Headings are inserted in this Agreement for convenience only and will not be construed as affecting the meaning of this Agreement.
- 10.4 No waiver of any term or condition of this Agreement or waiver of a breach of any term or condition of this Agreement by any party hereto will be effective unless it is in writing and no waiver or breach even if in writing will be construed as a waiver of any future breach.
- 10.5 This Agreement constitutes the entire Agreement amongst the parties and there are no terms, conditions, representations, or warranties, expressed or implied, statutory or otherwise, except for those expressly set forth herein.
- 10.6 Whenever the singular or masculine is used herein, the same will be construed as meaning the plural or feminine or body politic or corporate where the context of the parties hereto so require.
- 10.7 This Agreement will enure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns.
- 10.8 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

10.9 All references to section numbers in this Agreement refer to sections in this Agreement, and all references to Schedules in this Agreement refer to Schedules attached to this Agreement.

10.10 The Schedules to this Agreement are an integral part of this Agreement as if set out at length in the body of this Agreement.

The Corporate Seal of **REGIONAL DISTRICT OF EAST KOOTENAY** was hereunto affixed in the presence of:

Rob C. Gay, Chair

Shawn Tomlin, Chief Administrative Officer

Signed by **Yaqit ?a·knuqti 'it** in the presence of:

Witness Name

Witness Address

Councillor
Name:

Councillor
Name:

Councillor
Name: